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in allowing all competitors, even LECs, to price to the market. MFS's petition should be summarily denied.<sup>3</sup>

MFS's main premise is that LEC term and volume discounts for high capacity special access ("high cap") services are "predatory." Mere repetition of this charge, however -- no matter how frequent or strident -- does not make it so. Bell Atlantic has already filed more detailed cost support on this question than the Bureau has ever requested -- cost support that shows quite clearly that even the deepest discounts in Bell Atlantic's high cap tariff result in prices that are above average variable cost, the standard for anti-competitive or "predatory" pricing set by the Commission's price cap rules.<sup>4</sup>

The very example MFS chooses to illustrate its charge proves that the charge is groundless. MFS has chosen, of course, to highlight the Bell Atlantic rate element that is closest to cost, DS3C 5-year channel mileage fixed charge -- which is 5% above average variable cost.<sup>5</sup> That rate element, however, cannot be bought by itself; the customer must also buy at least

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<sup>3</sup> Bell Atlantic adopts, and therefore does not repeat here, the arguments in the Opposition of the United States Telephone Association (filed Mar. 31, 1993).

<sup>4</sup> Bell Atlantic Cost Support for Volume and Term Discounts, CC Dkt. No. 91-141 (filed Jan. 15, 1993) ("Bell Atlantic Cost Support"); see Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6824, ¶¶ 309, 310 (1990) ("Therefore, we seek a standard which requires suspension only of those rates which are so low that they can be presumed to be anti-competitive. We believe that average variable cost provides just such a standard."); 47 C.F.R. § 61.49(d).

<sup>5</sup> Bell Atlantic Cost Support at Workpaper 12; see MFS Petition at 8.

one mile of the per mile charge, which is priced at 230¢ above its average variable cost.<sup>6</sup> The result is that the price of the average DS3C circuit, which includes not only the fixed charge, but also approximately 10 miles of per mile charge,<sup>7</sup> is actually 82¢ above average variable cost.<sup>8</sup> This is a far cry from the below-cost predatory pricing MFS repeatedly alleges, but at no point attempts to prove.

Of course, MFS studiously avoids ever describing its own pricing behavior -- the behavior to which Bell Atlantic must respond if it is to attend any chance of competing in the market.

as much as 69% for DS3 services.<sup>10</sup> Finally, its secretive pricing and meaningless tariff empower MFS to discriminate at will, and cross-subsidize below-cost service to one customer with above-cost rates to others -- exactly the behavior it claims to fear from Bell Atlantic. Bell Atlantic, however, cannot charge individualized, secret, or below-cost rates to its customers.

Under these circumstances, it should not be surprising that MFS has expanded its network and market share quite rapidly. In fact, between 1990 and 1992 MFS nearly quadrupled its fiber miles to 39,000, quintupled the number of buildings it serves to 1,100, and quintupled its telecommunications services revenues to nearly \$50 million.<sup>11</sup> In the process, it has secured at least a quarter of the end user DS1 market in both Chicago and Washington.<sup>12</sup> And all of this was without collocation and without "fresh look." Given these facts -- which MFS is loathe to have the Commission discover -- MFS's claims that the

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<sup>10</sup> See Bell Atlantic *Ex Parte*, CC Dkt. No. 91-141, at 1-2 and App. A (filed Jun. 12, 1992) (excerpt attached). For example, MFS's combined volume and term plans for DS3 service in Houston generate a maximum discount of 69%. MFS's DS3 hubbing service in Chicago generates a maximum discount of 53% from its DS1 base rate. Its term plans for Boston and Houston allow it to "lock up" DS3 customers for 7 years and 10 years. Because MFS does its pricing in secret, these figures reflect the most recent data available, from 1989 MFS rate sheets.

<sup>11</sup> MFS Communications Company, Inc., Form S-1 Registration Statement, Securities and Exchange Commission, at 5 (filed Mar. 11, 1993) ("MFS SEC Registration").

<sup>12</sup> Connecticut Research, 1992 *Alternate Local Transport ... a Total Industry Report*, at 22 (1992); Quality Strategies, Bell Atlantic 1993 *High Capacity Dedicated Access Market Share Survey* (1993).

Commission's quite modest LEC pricing reforms threaten to render special access competition "an empty, theoretical concept" and "stillborn"<sup>13</sup> can most charitably be characterized as hyperbole.<sup>14</sup>

MFS's second premise is just as weak. MFS claims that the combination of the rate zone plan, the annual price cap filing, and the reallocation of GSF will generate reductions in high cap rates of 25%, which, starting from already low discount rates, "effectively ... authoriz[es] LECs to engage in below-cost predatory pricing."<sup>15</sup>

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<sup>13</sup> MFS Petition at 3-4.

<sup>14</sup> They could also be characterized as dishonest. Less than two weeks before it filed its Petition, MFS told investors and the SEC,

More specifically, the LECs, subject to FCC approval, are permitted to implement a system of traffic density-related rate zones. .... To the extent that LECs are provided increased flexibility to lower their rates, the Company's [MFS's] ability to compete for certain services may be adversely affected. *The Company believes that any such adverse effect will be more than offset by the increased revenues available as a result of access to off-net customers provided through interconnection.*

MFS SEC Registration at 45 (emphasis added).

<sup>15</sup> MFS Petition at 9.

This is wrong for two reasons. First, regardless of what the arithmetic might appear to allow them to do, the LECs cannot price any service below the average variable cost floor set by the Commission's rules.<sup>16</sup> Thus, for example, although the price cap rules would appear to allow Bell Atlantic to reduce its DS3C fixed mileage rate with today's annual access charge filing, that rate is not changing -- because it is relatively close to the Commission's cost floor already.<sup>17</sup> There is, therefore, no need to postpone either rate zones or GSF in order to keep individual rate elements from dropping below the lawful pricing floor.

Second, MFS's arithmetic is wrong. Although the rate zone plan appears to promise an ability to reduce prices in the highest density zone by 10%, the reality falls far short. In Bell Atlantic's case, for example, its high cap service market is concentrated in a relative handful of wire centers. Although Bell Atlantic's highest density zone includes only 12% of its wire centers, they account for 95% of high cap demand.<sup>18</sup> Because the high cap subindex can drop by no more than 5% a year, the highest density zone, which accounts for nearly all high cap service, can actually drop by only 5.5%, not the promised 10%, if

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<sup>16</sup> See note 4 above.

<sup>17</sup> Bell Atlantic Annual Filing at 18, Fig. 7-3.

<sup>18</sup> Supplemental Filing in Support of Bell Atlantic's Zone Density Pricing Plan, at 2 (filed Mar. 12, 1993).

the high cap subindex constraint is also to be met.<sup>19</sup> Rate zones are therefore worth only an additional one half of one percent additional downward pricing flexibility for Bell Atlantic's high cap services.

Moreover, the high cap subindices themselves need not drop anywhere near the full 5% per year theoretically allowed. In fact, Bell Atlantic's DS1 subindex is dropping only 1.5% this year, and DS3 is dropping only 1.3%.<sup>20</sup> Finally, the GSF reallocation will allow Bell Atlantic to reduce high cap indices by only about 8.8%. The result is that the actual potential high cap price reduction is more like 10% to 15% than the 25% MFS claims.

MFS is wrong, therefore, on both of its premises:

(1) that existing LEC term and volume discounts are currently predatory, and (2) that even if those discounts are above cost now, the modest reforms the Commission is proposing will soon make them predatory. Accordingly, there is no basis for the

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<sup>19</sup> This assumes that the other two zones are increased the full 5% allowed by the rate zone plan.


<sup>20</sup> Bell Atlantic Annual Filing at § 7.5.

extraordinary relief MFS requests, and the petition should be denied.

Respectfully submitted,

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April 2, 1993



**RESPONSE OF BELL ATLANTIC TO THE *EX PARTE* SUBMISSION  
OF METROPOLITAN FIBER SYSTEMS ON LOCAL EXCHANGE CARRIER  
VOLUME AND TERM PRICING PLANS  
CC Docket No. 91-141**

MFS asks the Commission to limit the LECs' volume, term, and hubbing discounts for high capacity special access services in order to protect MFS from legitimate LEC price competition. Once again, MFS seeks to compete, not in the marketplace, but by pressuring the Commission to deny customers the option of purchasing from LECs the services they want at competitive prices -- services and prices much like those that MFS itself offers.

MFS is wrong in claiming that LEC hi cap pricing is "predatory." MFS does not even attempt to show that LEC prices under hubbing arrangements and volume and term plans are below incremental cost. In fact, these discounts reflect very real cost savings in volume sales, long-term purchase commitments, and traffic concentration through multiplexing.

MFS is wrong in claiming that LEC pricing is "discriminatory." At the risk of belaboring the obvious, every one of the prices MFS identifies comes from a *tariff* that is public and generally available. By contrast, MFS's services are typically negotiated in secret with individual customers. The fact that services are purchased by a small number of customers does not make them discriminatory, especially access services that are offered in a market dominated by three large customers.

MFS is wrong in claiming that LEC pricing is "anticompetitive" because it is designed to pre-empt increased competition under special access collocation. MFS's *ex*

plans for Boston and Houston allow it to "lock up" DS3 customers for 7 years and 10 years. And, like the LECs, its plans have been available for years.

Clearly, MFS cannot challenge hi cap discounts *per se* -- only those that might allow LECs to compete with it on even terms.

**VOLUME AND TERM DISCOUNTS AND HUBBING ARRANGEMENTS FOR SPECIAL ACCESS SERVICES ARE NEITHER PREDATORY NOR DISCRIMINATORY.**

- Volume and term discounts have been repeatedly reviewed by the Commission and allowed to go into effect over objections by MFS that they are predatory or discriminatory. *See, e.g., MFS ex parte* at footnotes 35, 51, 56-59.
- Prices are not "predatory" unless they are below long-run incremental costs. *See, e.g., Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637, at ¶127 (1991); *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, at ¶310 (1990).
  - MFS has made no effort whatsoever to show that LEC hi cap prices are below incremental cost.
  - In fact, Bell Atlantic's term, volume, and hubbing tariffs exceed incremental costs. *See, e.g., Bell Atlantic Tariff F.C.C. No. 1*, Transmittal No. 506-Amended, at Workpaper 2-6 (June 5, 1992) (DS-1 term pricing).
- The discounts are based on real cost differences. *See, e.g., id.*
  - MFS's claim to the contrary is admittedly based on pure speculation. *See MFS ex parte* at 25 ("It is *at least possible* ... that current price structures go far beyond the underlying cost savings"; emphasis added).
  - Volume discounts reflect the lower per unit costs of concentrating higher volumes of traffic on the same transmission facilities. Technological advances in high capacity transmission electronics have produced higher and higher speed transmission systems that operate on the same installed fiber optic cable. Even though each advance in electronics has at least doubled

fiber transmission capacity, costs have increased by only a fraction. The result is that the same fiber plant can be used either for relatively low volume traffic at a higher cost, or for higher volumes at a substantially lower cost per channel. Chart 1 illustrates this volume-driven declining cost curve.

- Term discounts reflect the lower costs of longer-term supply

- As a practical matter, these discounts are most valuable to -- and used by -- customers that account for a large share of the special access market.
  - The interexchange carriers, who have the largest concentrations of traffic and the greatest need for long-term supplier commitments, account for three-quarters of all special access business.
- The fact that a generally available offering is only taken by a few customers does not mean that it is discriminatory. See, e.g., *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 38 (D.C. Cir. 1990); *Sea-Land Services, Inc. v. ICC*, 738 F.2d 1311, 1317 (D.C. Cir. 1984); *AT&T Communications Revisions to Tariff F.C.C. No. 12*, 6 FCC Rcd 7039, 7051 (1991).

**THESE DISCOUNTS DEMONSTRATE THE VIGOR OF COMPETITION IN THE SPECIAL ACCESS MARKET.**

- These discount plans are not new responses to Docket 91-141 -- most of them have been in effect for several years, some since 1987.
- The term pricing plans do not unfairly "lock up" IXC customers. As the New York Public Service Commission found in its most recent collocation decision, "IXCs are fully aware of the emerging competitive options and are capable of deciding for themselves whether long-term contracts are in their best interests. But the competitors would not have any restriction on offering long-term contracts, and imposition of a restriction on the LECs would unfairly handicap them." *Opinion and Order on Pooling, Collocation and Access Rate Design*, at 65-66, Case 28425, Opinion No. 92-13 (NY PSC, May 29, 1992).
- These plans provide a very limited form of pricing flexibility to meet customer needs. The willingness of suppliers to compete to meet the needs of customers for complex services demonstrates the suppliers' perception of high demand elasticity and a competitive market.
- The discount plans are similar to offerings by access competitors like MFS, except that they price on an individual case basis and in secret.
- Bell Atlantic's discount plans have been developed in response to requests from customers that we meet their needs for competitively packaged and priced access services that will compete more effectively with services offered by our access

competitors. These plans in fact fall far short of meeting those requests -- which would require full individual case pricing flexibility.

- Customers have stated publicly that they support efforts by the LECs to develop more competitive rates, and oppose MFS's efforts to enforce an anticompetitive pricing umbrella. For example, at the May 28, 1992 ALTS conference, a representative of large user groups responded to MFS's report of its *ex parte* by stating that MFS should stop challenging the LECs' ability to compete in terms of price and service, and focus instead on meeting customer needs.

**MFS IS TRYING TO USE THE REGULATORY PROCESS TO PREVENT COMPETITION, NOT PROMOTE IT.**

- For at least two years, MFS has offered term and volume plans and hubbing arrangements that generate exactly the same kinds of discounts that it complains about from the LECs. See Appendix A.
  - MFS's own maximum volume and term plan discounts are as high as 69% for DS3 and 31% for DS1. (These compare to LEC ranges, as calculated by MFS, of from 38% to 76% for DS3 and from 5% to 53% for DS1.)
  - MFS's own DS3 hubbing discounts are as high as 53%. (This compares to a LEC range, as calculated by MFS, of from 46% to 71%.)
  - When MFS is required to file tariffs, its tariffs reflect similar discounting flexibility. For example, MFS's tariff in Baltimore provides a min-max price band that allows a maximum discount of 57% for DS1 channel termination recurring charges and 70% for non-recurring charges. MFS Maryland P.S.C. Tariff No. 1, at 7.2.3.1.3.
  - Other competitive access providers offer similar discounts.
- MFS wants the Commission to enforce a LEC pricing umbrella for MFS's own services. This is yet another in the seemingly endless series of attempts by MFS to convince the Commission, in effect, to assign MFS market share -- instead of competing for it in the marketplace.

- **MFS consistently opposes any attempt by LECs to reduce prices or improve service offerings.**
- **MFS consistently prices its services below LEC tariffed rates. The higher the Commission forces the LECs to keep their prices (such as through narrow price cap bands or prohibitions on flexible pricing), the higher margins MFS can earn while still beating LEC prices.**
- **MFS's proposed restrictions on LEC pricing are transparently anticompetitive. MFS proposes to limit LEC use of the very pricing methods MFS itself uses. If the FCC considers any such restrictions -- which it should not -- they should apply with equal force to MFS's discounting practices.**
  - **MFS offers no justification for its arbitrary proposals of a 10% limit on term discounts and a 20% limit on volume discounts by LECs. In fact, MFS's own term and volume discounts exceed these limits.**
  - **MFS's proposal that the Commission abrogate the term commitments already entered between LECs and their customers is particularly inappropriate. Both customers and carriers have already incorporated these commitments into their business and facility plans.**

## APPENDIX A

### SURVEY OF METROPOLITAN FIBER SYSTEMS, INC. VOLUME AND TERM DISCOUNT PLANS FOR HIGH CAPACITY SERVICES

This survey analyzes the volume, term, and hubbing discount structures employed by MFS in Boston, Chicago, and Houston. These tables are based on late 1989 MFS price sheets. Because MFS does its pricing in secret, more recent data are not available. To the extent permitted by the limited data available on MFS's pricing practices, these tables use the same methodology employed in MFS's *ex parte*.

MFS DS3 TERM AND VOLUME DISCOUNTS HOUSTON				
Volume	Term	Point-to-Point	Per DS3	Discount from Base Rate
1 DS3	1 year	\$4,000.00	\$4,000.00	Base Rate
	3 years	\$3,100.00	\$3,100.00	22.50%
	5 years	\$2,800.00	\$2,800.00	30.00%
	10 years	\$2,700.00	\$2,700.00	32.50%
3 DS3s	1 year	\$6,600.00	\$2,200.00	45.00%
	3 years	\$4,950.00	\$1,650.00	58.75%
	5 years	\$4,650.00	\$1,550.00	61.25%
	10 years	\$4,200.00	\$1,400.00	65.00%
4 DS3s	1 year	\$7,800.00	\$1,950.00	51.25%
	3 years	\$6,000.00	\$1,500.00	62.50%
	5 years	\$5,200.00	\$1,300.00	67.50%
	10 years	\$5,000.00	\$1,250.00	68.75%
Assumption: Point-to-point mileage band is 0 miles				

**MFS DS3 TERM AND VOLUME DISCOUNTS  
BOSTON**



**MFS DS1 TERM AND VOLUME DISCOUNTS  
BOSTON**

Volume	Term	Point-to-Point	Per DS1	Discount from Base Rate
1 DS1	1 year	\$600.00	\$600.00	Base Rate
	3 years	\$510.00	\$510.00	15.00%
	5 years	\$460.00	\$460.00	23.33%
4 DS1s	1 year	\$2,000.00	\$500.00	16.67%
	3 years	\$1,800.00	\$450.00	25.00%
	5 years	\$1,650.00	\$412.50	31.25%
Assumption: Point-to-point mileage band is 1 mile				

**MULTIPLEXED DS3 RATE COMPARED TO DS1 BASE RATE  
(COMPUTED AS DISCOUNT FROM COMPARABLE POINT-TO-PT DS1 RATE)  
CHICAGO**

1 CT ● 1 DS3/2 yr.	Multi-plexer	28 DS1s ● 1 yr.	Total		DS1 Equivalent	Discount From Base Rate
\$1,980	\$550	\$6,300	\$8,830	Divide by 28	\$315.36	53.28%

Assumptions: Hubbed circuit (electrical)

**MULTIPLEXED DS3 RATE COMPARED TO DS1 BASE RATE  
(COMPUTED AS DISCOUNT FROM COMPARABLE POINT-TO-PT DS1 RATE)  
BOSTON**

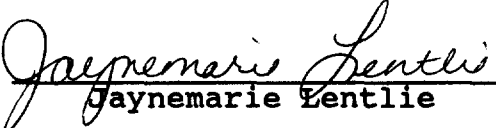
<b>1 CT @ 2 DS3s/3 yr.</b>	<b>Multi- plexer</b>	<b>28 DS1s @ 1 yr.</b>	<b>Total</b>		<b>DS1 Equivalent</b>	<b>Discount From Base Rate</b>	
\$1,611	\$550	\$8,260	\$10,421	Divide by 28	\$372.18	30.43%	0 mile DS1
						37.97%	1 mile DS1
						44.03%	2 mile DS1

**Assumptions:**

- Hubbed circuit (electrical)
- 100% fill rate
- Point-to-point mileage band 0 miles
- Base rates: 0 mile DS1 \$535
- 1 mile DS1 \$600
- 2 mile DS1 \$665

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Bell Atlantic's Opposition to MFS's 'Emergency Petition'" was served this 2nd day of April, 1993, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.

  
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